

Fishery Conservation and Management

§ 600.753

specific fishery conservation and management measures. In determining whether to establish an FNP, NMFS or the Council, as appropriate, shall consider whether:

(a) There is a need for specific fishery conservation and management measures.

(b) There are a limited number of identifiable interests that will be significantly affected by the conservation and management measure.

(c) There is a reasonable likelihood that an FNP can be convened with a balanced representation of persons who:

(1) Can adequately represent the interests identified under paragraph (b) of this section.

(2) Are willing to negotiate in good faith to reach a consensus on a report regarding the issues presented.

(d) There is a reasonable likelihood that an FNP will reach a consensus on a report regarding the issues presented within 1 year from date of establishment of the FNP.

(e) The use of an FNP will not unreasonably delay Council or NMFS fishery management plan development or rule-making procedures.

(f) The costs of establishment and operation of an FNP are reasonable when compared to fishery management plan development or rulemaking procedures that do not use FNP procedures.

(g) The Council or NMFS has adequate resources and is willing to commit such resources, including technical assistance, to an FNP.

(h) The use of an FNP is in the public interest.

§ 600.752 Use of conveners and facilitators.

(a) *Purposes of conveners.* A Council or NMFS may use the services of a trained convenueer to assist the Council or NMFS in: (1) Conducting discussions to identify the issues of concern, and to ascertain whether the establishment of an FNP regarding such matter is feasible and appropriate.

(2) Identifying persons who will be significantly affected by the issues presented in paragraph (a)(1) of this section.

(b) *Duties of conveners.* The convenueer shall report findings under paragraph

(a)(2) of this section and shall make recommendations to the Council or NMFS. Upon request of the Council or NMFS, the convenueer shall ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the potential conservation and management measures relevant to the issues to be negotiated. The report and any recommendations of the convenueer shall be made available to the public upon request.

(c) *Selection of facilitator.* Notwithstanding section 10(e) of the Federal Advisory Committee Act (FACA), a Council or NMFS may nominate a person trained in facilitation either from the Federal Government or from outside the Federal Government to serve as an impartial, neutral facilitator for the negotiations of the FNP, subject to the approval of the FNP, by consensus. The facilitator may be the same person as the convenueer used under paragraph (a) of this section. If the FNP does not approve the nominee of the Council or NMFS for facilitator, the FNP shall submit a substitute nomination. If an FNP does not approve any nominee of the Council or NMFS for facilitator, the FNP shall select, by consensus, a person to serve as facilitator. A person designated to represent the Council or NMFS in substantive issues may not serve as facilitator or otherwise chair the FNP.

(d) *Roles and duties of facilitator.* A facilitator shall:

(1) Chair the meetings of the FNP in an impartial manner.

(2) Impartially assist the members of the FNP in conducting discussions and negotiations.

(3) Manage the keeping of minutes and records as required under section 10(b) and (c) of FACA.

§ 600.753 Notice of intent to establish a fishery negotiation panel.

(a) *Publication of notice.* If, after considering the report of a convenueer or conducting its own assessment, a Council or NMFS decides to establish an FNP, NMFS shall publish in the FEDERAL REGISTER and, as appropriate, in trade or other specialized publications, a document that shall include:

§ 600.754

(1) An announcement that the Council or NMFS intends to establish an FNP to negotiate and develop a report concerning specific conservation and management measures.

(2) A description of the subject and scope of the conservation and management measure, and the issues to be considered.

(3) A list of the interests that are likely to be significantly affected by the conservation and management measure.

(4) A list of the persons proposed to represent such interests and the person or persons proposed to represent the Council or NMFS.

(5) A proposed agenda and schedule for completing the work of the FNP.

(6) A description of administrative support for the FNP to be provided by the Council or NMFS, including technical assistance.

(7) A solicitation for comments on the proposal to establish the FNP, and the proposed membership of the FNP.

(8) An explanation of how a person may apply or nominate another person for membership on the FNP, as provided under paragraph (b) of this section.

(b) *Nomination of members and public comment.* Persons who may be significantly affected by the development of conservation and management measure and who believe that their interests will not be adequately represented by any person specified in a document under paragraph (a)(4) of this section may apply for, or nominate another person for, membership on the FNP to represent such interests. Each application or nomination shall include:

(1) The name of the applicant or nominee and a description of the interests such person shall represent.

(2) Evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent.

(3) A written commitment that the applicant or nominee shall actively participate in good faith in the development of the conservation and management measure under consideration.

(4) The reasons that the persons specified in the document under paragraph (a)(4) of this section do not adequately represent the interests of the person

submitting the application or nomination.

(c) *Public comment.* The Council or NMFS shall provide at least 30 calendar days for the submission of comments and applications under this section.

§ 600.754 Decision to establish a fishery negotiation panel.

(a) *Determination to establish an FNP.* If, after considering comments and applications submitted under § 600.753, the Council or NMFS determines that an FNP can adequately represent the interests that will be significantly affected and that it is feasible and appropriate in the particular case, the Council or NMFS may establish an FNP.

(b) *Determination not to establish FNP.* If, after considering such comments and applications, the Council or NMFS decides not to establish an FNP, the Council or NMFS shall promptly publish notification of such decision and the reasons therefor in the FEDERAL REGISTER and, as appropriate, in trade or other specialized publications, a copy of which shall be sent to any person who applied for, or nominated another person for membership on the FNP to represent such interests with respect to the issues of concern.

§ 600.755 Establishment of a fishery negotiation panel.

(a) *General authority.* (1) A Council may establish an FNP to assist in the development of specific conservation and management measures for a fishery under its authority.

(2) NMFS may establish an FNP to assist in the development of specific conservation and management measures required for:

(i) A fishery for which the Secretary has authority under section 304(e)(5) of the Magnuson-Stevens Act, regarding rebuilding of overfished fisheries;

(ii) A fishery for which the Secretary has authority under 16 U.S.C. section 304(g), regarding highly migratory species; or

(iii) Any fishery with the approval of the appropriate Council.

(b) *Federal Advisory Committee Act (FACA)* In establishing and administering such an FNP, the Council or